

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Dallas Division

ROBERT HOPKINS, III,	*	
	*	
Plaintiff,	*	
	*	
v.	*	Civil Action No. 3:22-cv-00706 (E)
	*	
DEPARTMENT OF DEFENSE,	*	
	*	
Defendant.	*	
	*	
* * * * * *	*	* * * * * *

**APPENDIX TO PLAINTIFF’S OPPOSITION TO DEFENDANT’S
MOTION TO DISMISS AND FOR SUMMARY JUDGMENT**

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Kel McClanahan, Esq.

From: WHS Pentagon ESD Mailbox SECREV <whs.pentagon.esd.mbx.secrev@mail.mil>
Sent: Friday, January 14, 2022 10:53 AM
To: Kel McClanahan, Esq.
Subject: RE: [Non-DoD Source] Prepub review: Hopkins, 4 short pieces

No form is required. Forms are only for other DoD agencies. Usually, you would use your office letterhead when submitted on another's behalf. Any format is ok, we just need it for our records.

Tim West
DOPSR

From: Kel McClanahan, Esq. <kel@nationalsecuritylaw.org>
Sent: Friday, January 14, 2022 10:25 AM
To: WHS Pentagon ESD Mailbox SECREV <whs.pentagon.esd.mbx.secrev@mail.mil>
Subject: RE: [Non-DoD Source] Prepub review: Hopkins, 4 short pieces

Is there a particular form you would like me to use? I was unable to find one online.

This electronic mail (email) transmission is meant solely for the person(s) to whom it is addressed. It contains confidential information that may also be legally privileged. Any copying, dissemination or distribution of the contents of this email by anyone other than the addressee or his or her agent for such purposes is strictly prohibited. If you have received this email in error, please notify me immediately by telephone or email and purge the original and all copies thereof. Thank you.

Kel McClanahan, Esq.
Executive Director
National Security Counselors
Kel@NationalSecurityLaw.org
[301-728-5908](tel:301-728-5908)

"As a general rule, the most successful man in life is the man who has the best information."
Benjamin Disraeli, 1880

"Quis custodiet ipsos custodes?" ("Who will watch the watchers?")
Juvenal, Satire VI

-----Original Message-----

From: WHS Pentagon ESD Mailbox SECREV <whs.pentagon.esd.mbx.secrev@mail.mil>
To: "Kel McClanahan, Esq." <kel@nationalsecuritylaw.org>
Sent: Fri, 14 Jan 2022 10:22 AM
Subject: RE: [Non-DoD Source] Prepub review: Hopkins, 4 short pieces

Good Morning,

Do you have the cover letters for these submissions? We just need one to make a complete record. Please include contact info, a date you would the review complete, and a statement that says to the best of your knowledge, it does not contain classified info. Thanks!

Tim West
DOPSR

From: Kel McClanahan, Esq. <kel@nationalsecuritylaw.org>
Sent: Friday, January 14, 2022 4:21 AM
To: WHS Pentagon ESD Mailbox SECREV <whs.pentagon.esd.mbx.secrev@mail.mil>
Subject: [Non-DoD Source] Prepub review: Hopkins, 4 short pieces

Please find attached 4 new short manuscripts by my client Robert Hopkins. The titles are as follows for your records:

- Bring Back the Looking Glass? Do We Need 24/7 Airborne Command Posts?
- DoD Prepublication Review: A Broken, Arbitrary System Predisposed to Rejection
- Effectiveness of the Alert Force
- Why 15 Minutes Is Irrelevant

I am aware that Paul Jacobsmeyer has claimed that any submission not received directly from the author will be summarily denied. However, this policy--should it exist--is a violation of law, and if DOPSR chooses to deny clearance for these submissions based on the fact that my client has elected to have his lawyer handle the logistics of prepublication review for his fully unclassified manuscripts, please be aware that we will pursue all legal avenues at our disposal. Should you desire to meet with my client to discuss any concerns, I will be happy to facilitate such a discussion, but all correspondence regarding these submissions must be directed to me.

I similarly expect that DOPSR will reverse its denial of my client's 6 October 2021 submission, *Crowded Skies*, No. 22-SB-0002, and process it for release expeditiously, in light of the fact that your denial of that submission was exclusively based on the fact that I submitted the unclassified manuscript to DOPSR. Should you fail to do so, we will file a complaint in the appropriate federal district court.

We look forward to DOPSR's prompt clearance of the four attached manuscripts and *Crowded Skies*. If you have any questions, please do not hesitate to contact me.

Kel McClanahan

This electronic mail (email) transmission is meant solely for the person(s) to whom it is addressed. It contains confidential information that may also be legally privileged. Any copying, dissemination or distribution of the contents of this email by anyone other than the addressee or his or her agent for such purposes is strictly prohibited. If you have received this email in error, please notify me immediately by telephone or email and purge the original and all copies thereof. Thank you.

Kel McClanahan, Esq.
Executive Director
National Security Counselors
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NATIONAL SECURITY COUNSELORS

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KEL MCCLANAHAN, ESQ., EXECUTIVE DIRECTOR (admitted in NY, DC)
EMAIL: KEL@NATIONALSECURITYLAW.ORG

BRADLEY P. MOSS, ESQ., DEPUTY EXECUTIVE DIRECTOR (admitted in IL, DC)
EMAIL: BRAD@NATIONALSECURITYLAW.ORG

14 January 2022

Defense Office of Prepublication and Security Review
Department of Defense
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Robert Hopkins, "Bring Back the Looking Glass? Do We Need 24/7 Airborne Command Posts?"

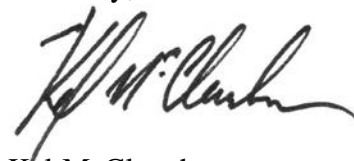
To Whom It May Concern:

Please accept this submission of my client Dr. Robert Hopkins's short article identified above.

My contact information is in the letterhead at the top of this message. My client and I are available to discuss this document at your convenience. Please complete your review of this document by 15 March 2022. To the best of my knowledge—and Dr. Hopkins's knowledge as well—this document is sourced exclusively from publicly available information and contains no classified information.

Please do not hesitate to contact me with any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kel McClanahan", with a stylized flourish at the end.

Kel McClanahan

Kel McClanahan, Esq.

From: SAF/PA Security and Policy Review <SAF.PA.Security.and.Policy.Review@us.af.mil>
Sent: Friday, January 21, 2022 4:04 PM
To: Kel McClanahan, Esq.; carolyn.y.oredugba.civ@mail.mil
Cc: usaf.pentagon.saf-pa.mbx.saf-pa-security-and-policy-review@mail.mil; SAF/PA Security and Policy Review; SOTALLARO, MARK Col HAF SAF/SAF/PA; KIMMONS, LORI M CIV USAF HAF SAF/SAF/PA; SUMPTER, BEVERLY A GS-13 USAF HAF SAF/SAF/PA
Subject: RE: [Non-DoD Source] Fwd: New prepub review for Robert Hopkins

Good Afternoon Mr. McClanahan

We received the security and policy review request on behalf of Mr. Robert Hopkins; however, the article was forwarded to the Defense Office of Prepublication and Security Review (DOPSR) for processing. In the future, please forward all of Mr. Hopkins' submission request directly to DOPSR for security and policy review processing. Thank you and stay well!

v/r

CAROLYN Y. OREDUGBA

SAF/PA SECURITY AND POLICY REVIEW & SECURITY ASSISTANT

1690 AIR FORCE PENTAGON (ROOM 4E809)

WASHINGTON, DC 20330-1690

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Carolyn.oredugba@us.af.mil (UPDATED CHES EMAIL ADDRESS)

Security and Policy Review Workflow: USAF Pentagon SAF-PA Mailbox SAF-PA

Security and Policy Review

usaf.pentagon.saf-pa.mbx.saf-pa-security-and-policy-review@mail.mil

SharePoint: <https://usaf.dps.mil/sites/10463/SecurityPolicyReview/Lists/Cases/HomePageView.aspx>

From: Kel McClanahan, Esq. <kel@nationalsecuritylaw.org>
Sent: Friday, January 14, 2022 2:48 AM
To: carolyn.y.oredugba.civ@mail.mil
Cc: usaf.pentagon.saf-pa.mbx.saf-pa-security-and-policy-review@mail.mil; SAF/PA Security and Policy Review <SAF.PA.Security.and.Policy.Review@us.af.mil>; SOTALLARO, MARK Col HAF SAF/SAF/PA <mark.sotallaro@us.af.mil>; KIMMONS, LORI M CIV USAF HAF SAF/SAF/PA <lori.kimmons@us.af.mil>; SUMPTER, BEVERLY A GS-13 USAF HAF SAF/SAF/PA <beverly.sumpter.1@us.af.mil>
Subject: [Non-DoD Source] Fwd: New prepub review for Robert Hopkins
Importance: High

be in our security interest.' In fact, the replacement turned out to be a British Vickers Varsity, but the message was clear: Sweden and the Baltic were suddenly a top American intelligence priority.

Technological improvements complicated this equation. The Soviet Union previously used high-frequency (HF) radios for its air-to-air and air-to-ground tactical communications. Beginning in 1950, the Soviets shifted to short-range very high frequency (VHF) radios, which US and other listening posts could not intercept except at limited distances. Although Soviet bombers continued to use HF radios for routine communications, interceptors—which posed the primary threat to SAC bombers en route to the USSR—used VHF radios exclusively. Gathering COMINT to determine tactical procedures and frequencies now dictated dedicated platforms and fixed locations much closer to the Soviet Union and its allies, necessitating closer ties with Scandinavian intelligence agencies.

These links were formalized in July 1954 at the Britain-US (BRUSA) COMINT Conference. The United States began negotiations [REDACTED], while Britain liaised [REDACTED], each on behalf of the other BRUSA nation. The US first concluded an agreement [REDACTED] to allow both ELINT and COMINT collection related to [REDACTED] [REDACTED] an area vital for early warning of a possible Soviet bomber attack on the United States. Subsequent American discussions turned to [REDACTED], bypassing the British entirely. [REDACTED] officials were invited to Wright-Patterson AFB, OH, to learn about the latest ELINT and COMINT collection systems. The US Air Force proposed selling much of this equipment to [REDACTED] and the US Embassy in [REDACTED] began negotiating an agreement to share SIGINT data collected [REDACTED] 'concerning Soviet troop deployments and activities in the Baltic states and Poland, as well as Soviet air and naval activities in the same

region.' A formal agreement was signed in February 1955. [REDACTED]
[REDACTED] continued to work on behalf of
[REDACTED] intelligence to promote cooperation with British and American civil and military collection and analysis.

US intelligence collaboration [REDACTED] was relatively overt compared with its relationship with [REDACTED]. The two [REDACTED] nations were members of NATO, and, although they had differing views on the presence of US bases in their countries, they had little reluctance in sharing operational and intelligence information with their American benefactor. [REDACTED] for example, built multiple SIGINT facilities on many of its [REDACTED] [REDACTED] on behalf of the [REDACTED]. Among these was the station at [REDACTED], a location which figured prominently in Cold War reconnaissance. This facility was likely funded and equipped by the US Air Force, and was 'extremely well suited for intercepting Soviet radar emissions coming from Poland, the Baltic states, as well as radar emissions coming from Soviet warships and aircraft operating in the Baltic Sea region.'

Sweden and Neutrality

Sweden, conversely, sought to preserve its public image of *alliansfrihet* or 'freedom from alliances in peace, neutrality in case of war' while still maintaining its cordial and beneficial relationship with the West. Questions about Swedish impartiality in peace and neutrality in war remain controversial, especially about the contradictory 'double policy' in which Swedish public and diplomatic behavior was often diametrically opposed to its private and military actions, a policy that was not unique to the Cold War.

Rebuttal to *Crowded Skies* pp 16-17 Redactions 30 March 2023

Robert S Hopkins, III

I have incorporated the changes requested for pages 234-237, and inserted the requested disclaimer.

The contentious material on pages 16-17 is quoted directly from the article by Matthew Aid (listed below). I submit the following revision to the content to show that I am merely repeating what Aid has written, without adding any material, and that this is beyond the scope of appropriate review and falls under academic and journalistic freedom of speech. Redaction of country names renders the entire content meaningless, and the presence of these names related to events in 1954—69 years ago—is irrelevant to US and allied-nation national security or diplomatic relations as this material is already officially unclassified and widely available in the public domain which is not subject to review.

I have included screenshots of Aid's text throughout the suggested new text to demonstrate that his scholarly journal article is the sole source of the material, and at the end of this document have appended the titles of the declassified and unclassified foreign primary source documents from which he derived his material.

SUGGESTED NEW TEXT (in GREEN)

These links were formalized in July 1954 at the Britain-US (BRUSA) COMINT Conference. Intelligence historian Matthew Aid chronicled this early evolution in a 2006 article in the *Journal of Strategic Studies*. The United States began negotiations [REDACTED], while Britain liaised [REDACTED], each on behalf of the other BRUSA nation.

Coming out of the July 1954 BRUSA conference was a decision to divide Scandinavia for Comint liaison purposes. The US was to develop Sigint liaison relationships with Norway and Denmark, while Britain was to handle Comint liaison with the Swedish intelligence community on behalf of the BRUSA nations.⁸³

(Aid, p 595)

The US first concluded an agreement [REDACTED] to allow both ELINT and COMINT collection related to [REDACTED] an area vital for early warning of a possible Soviet

bomber attack on the United States. Subsequent American discussions turned to [REDACTED],
bypassing the British entirely.

The first nation to commit to a formal Comint sharing relationship with Britain and the US was Norway, which as noted above, had already signed a tentative Sigint-sharing agreement with Washington in June 1952.⁸⁴ From 1952 to 1957, the top collection priority assigned by NSA to the Norwegian Sigint service was Comint coverage of Soviet strategic bomber activity in the Soviet Arctic region, especially on the Kola Peninsula. This priority was based on the fact that US Comint coverage had discovered that the Soviet Long Range Air Force (LRAF) had established in 1952 an Arctic Command at Tiksi Air Base in northern Russia to control LRAF bombers that were periodically forward deployed to the polar air bases at Olenegorsk, Vorkuta, Tiksi, Mys Schmidta, and Anadyr. Two of these air bases even had heavily-guarded nuclear weapons storage sites. These polar forward staging bases were needed by the LRAF because of the Russian TU-4 'Bull' bomber's short range, which meant that the only way these bombers could reach their designated targets in Canada and the northern United States was if they took off from air bases in the frigid northern Arctic portion of the Soviet Union.⁸⁵

By 1954, Norwegian Comint had become a critically important source of warning intelligence about a potential Soviet military offensive. The US intelligence community was largely dependent on Comint monitoring of the volume of LRAF bomber flight activity to and from their Arctic staging bases for advanced warning of a possible Soviet nuclear attack on the Continental United States.⁸⁶ US

(Aid, p 595)

[REDACTED] officials were invited to Wright-Patterson AFB, OH, to learn about the latest ELINT
and COMINT collection systems.

Declassified CIA documents reveal that the US Communications Intelligence Board (USCIB) formally began discussing a Comint liaison and information-sharing agreement with Sweden some time in March 1954.⁸⁹ These negotiations included a proposal submitted by the US Air Force to sell for the first time top-of-the-line American-made Elint intercept equipment to Sweden. The USAF proposal was approved by the State Department in October 1954.⁹⁰ Pursuant to the terms of this agreement, in late 1954 three Swedish Air Force intelligence officials visited the US Air Force's Air Technical Intelligence Center (ATIC) at Wright-Patterson Air Force Base, Ohio to study Elint collection and processing practices and procedures.⁹¹

(Aid p 596)

The US Air Force proposed selling much of this equipment to [REDACTED], and the US Embassy in

[REDACTED] began negotiating an agreement to share SIGINT data collected [REDACTED]

[REDACTED] 'concerning Soviet troop deployments and activities in the Baltic states and

Poland, as well as Soviet air and naval activities in the same region.' A formal agreement was

signed in February 1955. [REDACTED]

[REDACTED] continued to work on behalf of [REDACTED] intelligence to promote

cooperation with British and American civil and military collection and analysis.

⁸⁹ In May and June 1954, the US embassy in Stockholm began negotiations over an agreement calling for the sharing of intelligence information with the Swedish Defense Staff Intelligence Section, including Sigint data, concerning Soviet troop deployments and activities in the Baltic states and Poland, as well as Soviet air and naval activities in the

same region.⁹² In the partially declassified USCIB papers, Sweden is referred to by the cover name 'Sardines'. High-level discussions between the Swedish government and the State Department, which were coordinated by the USCIB, concerning the terms of a formal high-level Comint relationship between the US and Sweden, continued throughout 1954, apparently culminating in the signing of a formal agreement in February 1955. This was approved by the USCIB on 9 March 1955.⁹³ The key Swedish player in the formulation of these agreements was Colonel Holger Henning, who had taken over as the chief of the Defense Staff Intelligence Section (Sektion II) in 1953. Beginning in 1954, and continuing into late 1955, Henning held a series of secret meetings with American military intelligence officials in Stockholm to cement the increasingly important US–Swedish intelligence cooperative arrangements.⁹⁴

(Aid, pp 596-597)

US intelligence collaboration [REDACTED] was relatively overt compared with its relationship with [REDACTED]. The two [REDACTED] nations were members of NATO, and, although they had differing views on the presence of US bases in their countries, they had little reluctance in sharing operational and intelligence information with their American benefactor. [REDACTED] for example, built multiple SIGINT facilities on many of its [REDACTED] on behalf of the [REDACTED]. Among these was the station at [REDACTED], a location which figured prominently in Cold War reconnaissance. This facility was likely funded and equipped by the US Air Force, and was 'extremely well suited for intercepting Soviet radar emissions coming from Poland, the Baltic states, as well as radar emissions coming from Soviet warships and aircraft operating in the Baltic Sea region.'

After 1954, the Danish Sigint organization (which had been renamed in 1950 as the Defense Radio Service - *Forsvarets Centralradio*, or FCR) also continued to grow in size and capabilities during the second half of the 1950s. With considerable technical and financial assistance from the CIA, the Norwegian Intelligence Service and the Swedish FRA, the FCR established a large Comint intercept and processing facility at the Sandagergård station at Aflandshage, on Amager Island 15 miles south of Copenhagen. This station remains the home of Danish Sigint to this day, as well as the service's largest listening post.¹¹⁴ Beginning in 1954, the FCR began to construct larger and more permanent radio intercept and HFDF stations throughout Denmark. In June 1954, the Defense Ministry expropriated a tract of land called Skibsbylejren, located a few miles northeast of the Danish city of Hjørring in northern Jutland, for use as a Defense Radio Station. In fact this was to be a moderately-sized listening post and HFDF site.¹¹⁵ Also opened in 1954 was an HFDF site three kilometers outside the town of Løgumkloster in southern Denmark, whose address was Dravedvej 7.¹¹⁶ The Danish radio intercept station at Åkirkeby on Bornholm Island continued to copy the radio traffic of Soviet Navy and Air Force units operating in the Baltic.¹¹⁷

(Aid, p 602)

General Sources

Matthew Aid, "In the Right Place at the Right Time: US Signals Intelligence Relations with Scandinavia, 1945-1960," *Journal of Strategic Studies*, 29(4): 2006, 575-605.

Robert Dalsjö, *Life-Line Lost: The Rise and Fall of 'Neutral' Sweden's Secret Reserve Option of Wartime Help from the West* (Stockholm: Santerus Academic Press, 2006)

Mikael Nilsson, "Amber Nine: NATO's Secret Use of a Flight Path Over Sweden and the Incorporation of Sweden in NATO's Infrastructure," *Journal of Contemporary History*, 44(2): 2009, 287-307.

n.b. No idea why the word "former" on p 17 has been redacted.

BRUSA Agreement US-Norway/Denmark and UK-Sweden liaison

Thomas R Johnson, *American Cryptology during the Cold War, 1945-1989, Book I The Struggle for Centralization 1945-1960*, in *United States Cryptologic History, Series VI, The NSA Period, 1952-Present, Volume 5*, approved for release by NSA on 31 July 2007 in FOIA Case #40186, 16.

Memo, Hill to Finletter, *Norwegian Base Negotiations*, 29 Nov 1951 with inclosure, Declassified Documents Retrieval Service (DDRS).

William F Friedman Catalog, 5 Sep 1957, 2, 10, RG-457, Yardley Papers, Box 2, Document No 21, NARA

Olav Riste, *The Norwegian Intelligence Service: 1945-1970* (London: Frank Cass, 1999), 90-92, 227.

CIA, "Outline for Briefing of [DELETED] Group," 21 Jan 1953, 9, RG-263, CIA Reference Collection, Document No CIA-RDP79B00970A0001000010122-7, NARA

Appendix P, "COMINT Relations with Third Parties, Affecting BRUSA Relationships," NSA website, declassified under authority of the Interagency Security Classification Appeals Panel (ISCAP), EO 12958, as Amended, Section 5.3(b)(3) #2004-005

Kola Peninsula and Early Warning

Olav Riste, *The Norwegian Intelligence Service: 1945-1970* (London: Frank Cass, 1999), 84-87.

Robert Dalsjö, *Life-Line Lost: The Rise and Fall of 'Neutral' Sweden's Secret Reserve Option of Wartime Help from the West* (Stockholm: Santerus Academic Press, 2006), interview with former CINCSAC General Russell Dougherty.

TCS 95801/75, K F Spielmann, Jr, *The Evolution of Soviet Strategic Command and Control and Warning 1945-72* (Washington DC: Institute for Defense Analysis, 1975), 48, 122 [partially declassified at National Security Archives]

NIE 11-61, Probably Intelligence Warning of Soviet Attack on the US, 6 Apr 1961, 12, RG-263, Entry 29, Box 19, NARA

Denmark and Bases

Letter, Foster to Secretary of State with Inclosure, 22 Feb 1952, Entry 1260 Lot 56D459 General Records of the Executive Secretariat, Box 7, File: DOD Jan – June 1952, NARA, TS Control No 2-23539

Memo, Cook to Directorate of Communications, "USAF Security Site Survey and Base Rights Requirements," 16 May 1952, with enclosure, RG-341, Entry 214, File 2-23500 – 2-23599, NARA

OCI No 5195, CIA, Office of Current Intelligence, *Current Intelligence Digest* 5 June 1952, 9, RG-263, CIA Reference Collection, Document No CIA-RDP79T01146A001000170001-3, NARA

OCI No 6456, Office of Current Intelligence, *Current Intelligence Digest* 6 Aug 1952, 1-2, RG-263, CIA Reference Collection, Document No CIA-RDP79T01146A001100300001-7, NARA

TS Control No 3-1929, Memo for Record, 6 May 1953, RG-341, Entry 214, Box 73, File: 3-1900 – 3-1999, NARA

TS Control No 3-1982A, Memo, Townsend to Commanding General, USAF Security Service, "Danish Reaction to Request for NATO Base and Intercept Sites," May 20, 1953, RG-341, Entry 214, Box 73, File: 3-1900 – 3-1999, NARA

Hjørring Kommune, Teknisk Forvaltning, Lokalplan Nr 199.10, Område til offentlige formål Skibsbylejren (militære anlæg) 2 Nov 1998, 9.

TS Control No 4-4222, Air Attaché, Copenhagen, Denmark, Air Intelligence Information Report IR-149-54, "Danish Attitude and Cooperation in Regards to USAFE Special Mission, 'Flourescent'," 19 Oct 1954, RG-341, Entry 267, Box 191, File 4-4222, NARA

Forsvarets Efterretningstjeneste, *FE 1967-2017 – fra militær varslings-tjeneste til udenrigs-efterretningstjeneste*, 44.

Holger Terp, *Forsvarets Efterretningstjeneste: Et forsvar med mange udekendte*, Danske Fredsakademi, 2020, 20.

Sweden and Swedish Visit to Wright-Patterson AFB

Msg, Deptel No 767, Secretary of State to Stockholm 8 April 1954, RG-59, Decimal File 1950-1954, Box 3774, File: 758.56/4-954, NARA

Msg, Embtel No 843, Stockholm to Secretary of State, 9 April 1954, Decimal File 1950-1954, Box 3774, File: 758.56/4-954, NARA

Msg, Deptel No 247, Secretary of State to Stockholm 14 October 1954, RG-59, Decimal File 1950-1954, Box 3774, File: 758.56/4-954, NARA

Mats R Berdal, *The United States, Norway and the Cold War, 1954-60* (London: Macmillan, 1997) 233, fn60.

Memo, Sanford to Director of Plans, March 4 1955, RG-341, Entry 214, Box 81, File: 5-531 – 5-1431, NARA

Letter, Gibbs to Smith, 13 Dec 1954, RG-59, Decimal File 19501954, Box 3191, File: 711.56357/12-1354, NARA

TS Control No 5-2480, Memo, Sanford to Quarles, “Detection Site in Sweden”, 21 Oct 1955, RG-341, Entry 214, Box 82, NARA

Letter, Cabot to Elbrick, 9 Nov 1955, RG-59 Entry 5170 Lot 81D402 Papers of Ambassador John M Cabot, NARA

Letter, Cabot to Elbrick, 7 Dec 1955, RG-59 Entry 5170 Lot 81D402 Papers of Ambassador John M Cabot, NARA

Memo, ATSD (SO) to Assistant Secretary of Defense (ISA), “Installation of Radar in Europe,” 12 Feb 1957, RG-330, Office of Special Operations, OSD, DoD, FOIA via Matthew Aid

“Memo for the Record re: Weaver Discussions With Swedish on Guided Missiles,” 19 Sep 1957, RG-330, Office of Special Operations, OSD, DoD, FOIA via Matthew Aid

Memo, Douglas to Secretary of Defense, “Installation of AN/FPS-17 (XW-3) Radar on Shemya Island, 15 Jan 1958, RG-340, Entry 1-E, Top Secret General Correspondence 1956-1964, Box 10, File: 491-58 Radar Installations Overseas, NARA

SATSD (SO), Memo, Erskine to Deputy Secretary of Defense, “Installation of AN/FPS-17 Radar on Shemya Island,” 11 Mar 1958, 1, RG-330, Office of Special Operations, OSD, DoD, FOIA via Matthew Aid

Holger Henning et sequitur

Subject Number: Decimal No 29.17, Subject: Sweden, in Numerical Index of USCIB Papers, undated, RG-263, CIA Declassified Reference Materials, Box 241, Folder 3, Document No CIA-RDP82S00527R000100230025-5, NARA

Department of State (Cabot), “Memo of Conversation,” 27 Nov 1955, RG-59, Decimal File 1955-1959, Box 3466, File 758.5/11-2755, NARA

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Dallas Division

ROBERT HOPKINS, III,

Plaintiff,

v.

DEPARTMENT OF DEFENSE,

Defendant.

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*
*
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Civil Action No. 3:22-cv-00706 (E)

* * * * *

SECOND DECLARATION OF ROBERT HOPKINS, III

I, Robert Hopkins, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify.

I make this Declaration on personal knowledge.

2. I have written about military history for several decades and published my first book in 1997. A list of my creative works is attached to this declaration.

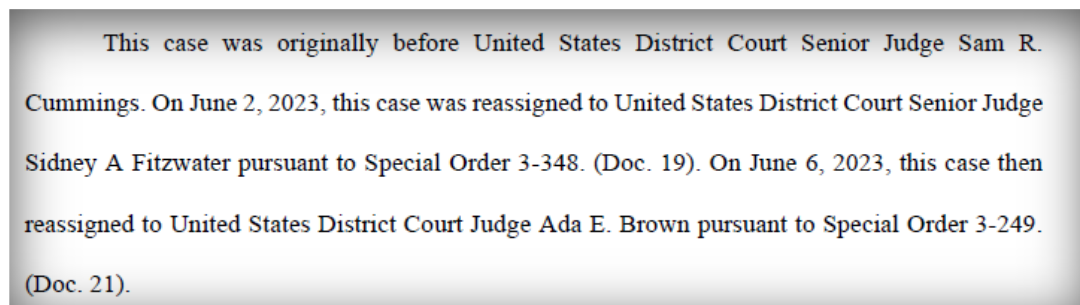
3. On July 21, 2023, I submitted a document to the Defense Office of Prepublication and Security Review (“DOPSR”), intending to provide the document to my lawyer to assist his efforts to oppose the Government’s motion for summary judgment once DOPSR had cleared it for release.

4. The document was a mostly comprehensive response addressing almost all of DOD’s redactions from the various manuscripts included in this case.

5. The document followed a simple pattern. First I would indicate the piece of information DOPSR had redacted from a manuscript. Then I would attach an image of the relevant portion of the unclassified and/or officially released document from which I sourced the information. Then I would give a full citation to the source document.

6. For example, if I had written the sentence “The case was first assigned to Judge Cummings before it was reassigned twice: once to Judge Fitzwater and finally to Judge Brown” on page 25 of one of my manuscripts, and DOPSR had redacted the names of the judges assigned to the case, the relevant section of my response document would have looked like this:

P. 25 Judges’ Names



This case was originally before United States District Court Senior Judge Sam R. Cummings. On June 2, 2023, this case was reassigned to United States District Court Senior Judge Sidney A. Fitzwater pursuant to Special Order 3-348. (Doc. 19). On June 6, 2023, this case then reassigned to United States District Court Judge Ada E. Brown pursuant to Special Order 3-249. (Doc. 21).

6/13/23 Order, Hopkins v. DOD, No. 3:22-CV-00706-E (N.D. Tex.)

7. Virtually everything in my response document was either a summary of redacted material from a manuscript or a pasted image from an unclassified publicly available source and a citation to that source.

8. This means that if one were to redact all the manuscript summaries from my response document, the only substantive information that would be left would be images of unclassified, publicly available documents and the corresponding citations.

9. On October 23, 2023, DOPSR informed me that I was prohibited from providing anything in my response document to my lawyer.

10. On March 30, 2023, I sent my lawyer a detailed rebuttal to DOPSR's determination that information from pages 16-17 of *Crowded Skies* was classified. I understand that he submitted this rebuttal to DOPSR on April 26, 2023.

11. All of the information I provided in these responses is accurate.

12. I still intend to publish the manuscripts I have submitted for prepublication review. Specifically, the publishers of *Klaxon!* and *Crowded Skies* are ready to publish the books once this case is resolved.

13. I have submitted additional fully unclassified manuscripts directly to DOPSR since I filed this case which I should have been able to submit to the Air Force or through my lawyer, and unless I prevail in this case I will need to continue to do so, despite having the legal right not to.

14. I did not learn of any of the redacted information in the course of my government employment. I learned all of this information from public sources after my retirement.

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true to the best of my knowledge.

Date: April 14, 2025

A handwritten signature in blue ink, appearing to read 'Rob Hopkins', followed by a long horizontal line.

Robert Hopkins, III

Robert S Hopkins, III, Creative Works

Strategic Air Command: An Operational History (Manchester, England: Crécy Publishing, 2026) under contract.

Spyflights and Overflights: U.S. Strategic Aerial Reconnaissance, Vol. 2, 1960-1992 (Manchester, England: Hikoki Publishing, 2024) under contract.

_____, Brian C Rogers, and Lindsay Peacock. *Klaxon! Strategic Air Command Alert During the Cold War* (Warick, UK: Helion, 2023) in press.

_____ and Lennart Andersson. *Crowded Skies: Cold War Reconnaissance Over the Baltic* (Manchester, England: Hikoki Publishing, Ltd., 2023).

Review of *To Rule the Skies: General Thomas S Power and the Rise of Strategic Air Command in the Cold War in Aerospace*, December 2021, np.

Review of *Rain of Steel: Mitscher's Task Force 58, Ugaki's Thunder Gods, and the Kamikaze War off Okinawa* in *The Aviation Historian*, 37 (October 2021): 118-19.

Review of *Harrier 809* in *Aerospace*, August 2021, 46.

Review of *Airpower Over Gallipoli, 1915-1916* in *The Aviation Historian*, 26 (July 2021): 120-21.

Review of *Spying from the Sky: At the Controls of US Cold War Aerial Intelligence* in *The Aviation Historian*, 35 (April 2021): 120-21.

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"Les yeux tournés vers l'espace." trans. Alexis Rocher, *La Fana de l'Aviation* 596 (July 2019): 30-36.

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_____ and C Mike Habermehl. "Stratojets in Blighty." *The Aviation Historian* 24 (July 2018): 24-33.

"Missile Monitors: RC-135s and Reconnaissance of North Korea." *Air Forces Monthly* (June 2018): 52-55.

"Des essais français sous l'œil des Américains." trans. Alexis Rocher, *La Fana de l'Aviation* 573 (August 2017): 52-55.

The Boeing KC-135 Stratotanker: More Than a Tanker. Manchester, England: Crécy Publishing, 2017.

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Spyflights and Overflights: US Strategic Aerial Reconnaissance, Vol 1, 1945-1960. Manchester, England: Hikoki Publishing, 2016.

Contributor *Encyclopedia of Health Services Research*, 2008 ed. s.v. "White, Kerr Lachlan;" "Kimball, Justin Ford."

Fullerton C, Aponte P, Hopkins R, Bragg D, Ballard D. "Lessons learned from pilot site implementation of an ambulatory electronic health record." *Baylor University Medical Center Proceedings* 19 (October 2006): 303-310.

Ballard DJ, Spreadbury B, Hopkins, RS. "Health Care Quality Improvement Across the Baylor Health Care System: The First Century." *Baylor University Medical Center Proceedings* 17 (July 2004): 270-81.

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Review of *Stiff: The Curious Lives of Human Cadavers*, in *Baylor University Medical Center Proceedings* 17 (May 2004): 178.

Review of *The Cruellest Miles: The Heroic Story of Dogs and Men in a Race Against an Epidemic*, in *Baylor University Medical Center Proceedings* 16 (October 2003): 506-507.

Contributor ABC-CLIO *Encyclopedia of Airpower*, 2001 ed. s.v. "Aviation and the Arts;" "Holloway, Bruce K.;" "Israeli Air Force;" "USS *Liberty*;" "Israeli Attack on Osirak Reactor;" "Locarno Conference;" "USS *Pueblo* Incident;" "Saab Aircraft;" "Saab J-29;" "Single Integrated Operations Plan (SIOP);" "Six Day War;" "Sputnik;" "Suez Crisis;" "Air Power Views of Harry S. Truman;" "Twining, Nathan K.;" "Vandenberg, Hoyt S.;" "Washington Naval Conference (1921-22);" "Yom Kippur War".

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Review of *Incident at Sakhalin: The True Mission of KAL Flight 007*, in *Intelligence and National Security* 11 (October 1996): 816-20.

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- Review of *The Role of Defense Budgets in Civil-Military Relations*, by Gordon Adams, in *Demokratizatsiya: The Journal of Post-Soviet Democratization*, (Summer 1993): n.p.
- "Heyl Ha'avir Boeing 707s," *Journal of Military Aviation*, 2 no. 1, January-February 1993, 25-32.
- Review of *SR-71 Pilot's Manual: The Official US Air Force SR-71A Flight Manual*, in *Journal of Military Aviation*, 1 no 5, September-October 1992, 44-45.
- Review of *SR-71: Inside Lockheed's Blackbird*, by Michael O'Leary and Eric Schulzinger, in *Journal of Military Aviation*, 1 no 5, September-October 1992, 44-45.
- Review of *Sled Driver: Flying the World's Fastest Jet*, by Brian Shul with Sheila Kathleen O'Grady, in *Journal of Military Aviation*, 1 no 5, September-October 1992, 44-45.
- "The Sale of Boeing KC-135 Jet Tankers to France and the Development of French Nuclear Autonomy." M.A. thesis, Creighton University, 1992.
- "Close Call for an RB-47H." *Journal of Military Aviation*, 1 no. 3, May-June 1992, 44-45.
- Review of *Inside the Stealth Bomber: The B-2 Story*, by Bill Scott, in *Journal of Military Aviation*, 1 no. 1, March-April 1992, 48-49.
- Review of *Northrop B-2 Stealth Bomber*, by Jay Miller, in *Journal of Military Aviation*, 1 no. 1, March-April 1992, 48-49.
- Review of *Lockheed F-117 Stealth Fighter*, by Jay Miller, in *Journal of Military Aviation*, 1 no. 1, March-April 1992, 48-49.
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- Review of *Mid-East Aces: The Israeli Air Force*, by Philip Handleman, in *Journal of Military Aviation*, 1 no. 1, January-February 1992, 48-49.
- Review of *El Al: Star in the Sky*, by Marvin G. Goldman, in *Journal of Military Aviation*, 1 no. 1, January-February 1992, 48-49.
- Review of *Fighters Over Israel: The Story of the Israeli Air Force from the War of Independence to the Bekaa Valley*, by Lon Nordeen, in *Journal of Military Aviation*, 1 no. 1, January-February 1992, 48-49.
- Review of *G-Suit*, by Merav Halperin and Aharon Lapidot, in *Journal of Military Aviation*, 1 no. 1, January-February 1992, 48-49.
- "Looking Glass." trans. by Christian Jacquet. *Air Fan*, February 1992, 16-19, 21-23 (in French); and *Air Fan*, March 1992, 10-15 (in French).
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- "COBRA BALL and COBRA EYE: Alaskan Observers." *World Air Power Journal* 8, January 1992, 128-39.
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- Review of *OKB MiG: A History of the Design Bureau and its Aircraft*, by Piotr Butowski with Jay Miller, in *IPMS Journal* 3 no. 6, (1991): 42-43.

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- "Wings, Patch Signify More Than Appearance." *Air Pulse*, 27 July 1990, 12.
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- "Building Mr. Right: Character Editors for Fantasy/Role-Playing Games." *A+ Magazine*, November 1988, 69-74.
- "Aircraft Celebrates 32nd Birthday." *The Goldpanner*, 9 September 1988, 3.
- "FACs Over Panama." *Air International*, August 1988, 77-80.
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- "RC-135s Celebrate Anniversaries." *The Goldpanner*, 14 August 1987, 3.
- "Looking for a Challenging TDY?" *The Goldpanner*, 14 August 1987, 3.
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- "KC-135 Tankers Celebrate Anniversary of First Flight." *The Air Force Times*, 6 October 1986, 54.
- "KC-135 Celebrates 30th Birthday." *The Pacesetter*, 29 August 1986, 1. (This article was also published in Strategic Air Command base newspapers throughout the world.)
- "Project Warrior." *The Pacesetter*, 9 May 1986, 5.
- "Military Highly Vulnerable During Peacetime." *The Pacesetter*, 25 April 1986, 5.
- "The 135s." *The Pacesetter*, 20 December 1985, 8.
- Review of *China and the West: Society and Culture 1815-1937*, by Jerome Ch'en, in *Air University Review*, n.d., n.p.
- Review of *The Revolutionary Armies: The Historical Development of the Soviet and the Chinese People's Liberation Armies*, by Jonathan R. Adelman, in *Air University Review*, September-October 1982, 120.
- Review of *The Soviet Threat to NATO's Northern Flank*, by Marian K. Leighton in *Air University Review*, March-April 1982, 120.
- Review of *The Horn of Africa in Continuing Crisis*, by Colin Legum and Bill Lee in *Air University Review*, March-April 1982, 119-120.
- Review of *The United States Marine Corps in Vietnam-1965*, by Jack Shulimson and Major Charles M. Johnson in *Air University Review*, January-February 1982, 127.

Review of *NATO, Turkey, and the Southern Flank: A Mideastern Perspective*, by Lieutenant General Ihsan Gurkan, in *Air University Review*, January-February 1982, 124.

Review of *Assault on the Liberty*, by James M. Ennes, Jr., in *Air University Review*, November-December 1981, 123-124.

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“The Israeli Air Force: An Order of Battle.” *Strategy & Tactics Magazine*, July-August 1980, 34.

“Flights of Fancy: Scenario Models for Air War Update.” *Moves Magazine*, June-July 1980, 19-23.

“You Too Can Be an Air War Ace.” *Moves Magazine*, August-September 1978, 4-5, 8.

Consultations

Research consultant and principal interviewee for the Smithsonian Channel’s “Air Warriors” Season 3 Boeing KC-135 Stratotanker, aired 2017.

Research consultant and principal interviewee for the NRK [Norway] “Brennpunkt” series, 2004.

Research consultant and principal interviewee for the BBC and History Channel “Secrets of War” series, 1996 to 1998.

Episodes include:

“The Gulf War: Steel Rain” [strategic intelligence collection during the Gulf War]

“Balkan Tinderbox” [political history of the Balkans]

“Battlefield Deception” [limits of intelligence in peace and war]

“Spyplanes” [history and future of aerial reconnaissance in American policy and culture]

Research consultant and principal interviewee for the BBC and History Channel “History Undercover” series, 1996 to 1998.

Episodes include:

“History of Aerial Reconnaissance” [evolution of governmental willingness to use aerial espionage]

“Spy Flights of the Cold War” [effect of strategic aerial reconnaissance on the evolution of Soviet-American relations during the cold war]

Television and radio interviews on U.S.-North Korean relations (2003), the 40th anniversary of Sputnik (1997), the death of Deng Xiaoping and the future of Sino-American relations (1997), U.S.-Iraqi relations (1996, 1997, 1998, 2003), and on Thomas Jefferson and agriculture (1993). Dedicated programs include:

- Guest on the Nebraska Public Television program “Consider This,” 20 November 1997, to discuss U.S.-Iraqi relations.
- Guest on the Canadian Broadcast Corporation radio program “Quirks and Quarks,” 20 September 1997, to discuss the 40th anniversary of Sputnik and its effect on science, education, culture, and national security.
- “Perspectives on Recent Developments in Iraq.” With John Calvert, Ph.D., 10 September 1996. The first in a series of discussions on the history behind the news.

Principal researcher, interviewer, and writer for the bi-weekly radio program “Talking History,” broadcast on university and public radio stations worldwide. Selected topics, coordinated guests, undertook background research, and conducted on-air interviews. Programs include:

- John Lewis Gaddis (Nov 97)—The Legacy of Sputnik: Educational? Technological? Political?
- Jeffrey Wasserstrom (Dec 97)—The U.S. Image of China
- H R McMaster (Jan 98)—Tet: Thirty Years Later
- James Jones (Feb 98)—The Life of Alfred Kinsey: Sex and Sexuality in America
- Peter Stevens (Mar 98)—The St Patrick’s Battalion: The Irish in the Mexican American War
- Stanley Kutler (Mar 98)—Watergate and the Nixon Tapes
- Rashid Khalidi (May 98)—Israel at 50

- Cargill Hall (May 98)—Memorial Day's Forgotten: Cold War Spy Pilots
- Jefferson Rogers (Aug 98)—On Summer Vacation: Motels in American History

Research consultant for the Chinese magazine *Defence International*. Analyzed the future of aerial refueling and its relation to global power projection. Published December 1997 and January 1998.

Research consultant on behalf of Steven Bolt for the Dutch magazine *Kijk*. Analyzed the viability of aerial reconnaissance in defense of tactical ballistic missiles in the next century. Published December 1997.

Research consultant and contributing author on aerospace issues for Time-Life, Incorporated. Conducted original historical research for and reviewed the manuscript of *Electronic Spies*, Volume 7 in Time-Life's *New Face of War* series. Primary emphasis of the research was the history of U.S. strategic aerial intelligence gathering and its guiding policy. Additional material considered the role of strategic reconnaissance in Operation desert storm. Published January 1992.

Research consultant on behalf of Ted Landreth Associates of Los Angeles and freelance writer Ed Tivnen of New York for an investigative project on clandestine Soviet involvement with U.S. prisoners of war (POWs) in Vietnam during 1965-1966. The research focused on the relationship of the Soviet SA-2 surface-to-air missile and aerial intelligence collection associated with it, the relation of this missile to U.S. and Soviet defense policy, and how the Soviets used U.S. POWs to determine the extent of U.S. knowledge of this weapon. "On the Trail of the MIAs" was published on 27 October 1991, in the *Los Angeles Times Magazine*, 8-14, 37-39, and read into the Congressional Record.

Presentations of Original Research

"To Sniff and to See: Atmospheric Aerial Monitoring of Nuclear Tests." Charterhouse Nuclear History Conference, Godalming, England, 2023.

"Crowded Skies: Cold War SIGINT Over the Baltic." Swedish *Flygvapenmuseum*, Linköping, 2021.

"How's the Weather? Integrating OSINT with Archival Research in Cold War Airpower and Aerial Reconnaissance History." Finnish National Defense University, Helsinki, 2019.

"Strategic Air Command in the United Kingdom." Royal Aeronautical Society, London, 2018.

"The 'Myth' of Dayton: Re-evaluating Strategic Air Command's Early Capabilities." New Opportunities in Early Cold War Historiography, King's College, London, 2018.

"Strategic Aerial Reconnaissance and Russia: Lessons from the Soviet Era." United Kingdom Joint Command and Staff College, 2017.

"The Soviet Response to Western Aerial Reconnaissance Flights." "Cold War in Flames" Conference at the Strategic Air Command Museum in Omaha, Nebraska, 1998.

"The Unintended Consequences of the U.S. Strategic Aerial Reconnaissance Effort." National Policy History Conference at Bowling Green State University, 1997

Panel moderator on U.S. overflights of the Soviet Union. Strategic Air Command Historical Conference, Offutt AFB, Nebraska, 1996.

"An Expanded Understanding of Eisenhower, American Policy, and Overflights." Society of Historians of American Foreign Relations (SHAFR) Conference, 1995.

"Short of White House Approval: The Way the Kennedy Administration Did Business." Paper on decision making and Franco-American nuclear relations during the Kennedy, Missouri Valley Historical Conference, 1994.

"Thomas Jefferson: A Mind of Many Facets." Keynote speaker, 250th anniversary celebration of the birth of Thomas Jefferson, Virginia Museum of Science, Richmond, Virginia, 13 April 1993.

“The Israeli Air Force and the Survival of the State of Israel.” Third World Conference, University of Nebraska-Omaha, 1979.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Dallas Division

ROBERT HOPKINS, III,

Plaintiff,

v.

DEPARTMENT OF DEFENSE,

Defendant.

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Civil Action No. 3:22-cv-00706 (E)

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DECLARATION OF STEVEN J. SHIRLEY

I, Steven J. Shirley, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify.

I make this Declaration on personal knowledge and in opposition to Defendant's Motion to Dismiss and for Summary Judgment.

2. I am a retired U.S. Air Force Master Sergeant with 26 years active duty

3. My primary expertise was as an Airborne Communications Systems Operator with 13 years' experience on Strategic Air Commands/Strategic Commands Airborne Command Post (Looking Glass), 4 years on the European Command Airborne Command Post (Silk Purse), and 2 years with the National Airborne Operations Center (E-4B).

4. Upon retirement from the Air Force, I became a civilian employee of the United States Strategic Command (USSTRATCOM) for 19 years, with a majority of my time as a Nuclear Command, Control, and Communications (NC3) analyst.

5. I retired from the Department of Defense (DoD) in December 2022.

6. As part of my official duties, I was tasked by my Directorate (J3 Global Operations) and my Division (Nuclear Operations) to perform prepublication review of relevant manuscripts.

7. Over my career, I performed prepublication review of three manuscripts and reviewed countless documents for release under the Freedom of Information Act.

8. I reviewed Robert Hopkins' manuscript *Klaxon! Strategic Air Command Alert During the Cold War* and provided the results of my review to the Defense Office of Prepublication and Security Review (DOPSR) by way of the USSTRATCOM Office of Primary Responsibility—which I believe was the J5 Directorate (Plans and Policy)—in September 2021.

9. Four USSTRATCOM Directorates conducted the initial review: J2 (Intelligence), J3 (Global Operations), J5 (Plans and Policy), and the Historian's Office.

10. I was instructed to identify any classified information or Controlled Unclassified Information (CUI), which is unclassified information that the government still limits access to. This is the standard policy I always followed when performing prepublication reviews.

11. I identified no classified information or CUI in this manuscript, and I made comments indicating this when closing out the review for the USSTRATCOM Point of Contact.

12. At the time I conducted this review, I reviewed the comments made by the other USSTRATCOM Directorates.

13. All of the information in this manuscript was taken directly from unclassified Strategic Air Command documents, Department of Defense social media posts, and similar publicly available sources. This fact and Dr. Hopkins' identification of those original sources easily refute the comments made by the other USSTRATCOM Directorates.

14. In September 2022, USSTRATCOM conducted a second review of *Klaxon!*. Only the J2 and J3 Directorates conducted this re-review.

15. I was not tasked with this re-review and only became aware of it after the fact.

16. In October 2022, Dr. Hopkins sent me a redacted copy of *Klaxon!* that he had received from DOPSR. He asked me to identify any of the redactions I made and to tell him if I knew who had made the others.

17. I was able to ascertain that three DoD entities were responsible for the redactions: Joint Staff, USSTRATCOM, and the Office of the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs.

18. Almost none of the redactions were attributed to the USSTRATCOM J3 Directorate, even though many were of information I had reviewed and cleared for release because it contained J3 equities.

19. The redactions made by J3 were made during my absence by a coworker who is a former Emergency Actions Controller with the 4th Airborne Command and Control Squadron, which flew similar aircraft to the ones described in *Klaxon!*, who may have reflexively redacted information related to his previous work without considering the public sourcing. Many of the people working in these programs are not aware that much of the information that was classified during the Cold War has since been declassified, and so they erroneously continue to treat it as classified because it was classified when they last worked with it.

20. J2 has a reputation for considering everything it does to be classified even when it is not, and it is very likely that the J2 reviewer did not consider the public sourcing either.

21. Because the government has taken the position in this case that the redacted information is currently and properly classified, I cannot provide specifics about the redacted information or which entity made which redaction in this public declaration. If I am given access to the unredacted manuscript by the Court I will be able to easily explain why the information is not currently and properly classified as well as why the entity responsible for each redaction (which I can identify for the Court with specificity) was wrong to redact the information.

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true to the best of my knowledge.

Date: April 14, 2025

Steven J. Shirley

Steven J. Shirley

Steven J. Shirley

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Dallas Division

ROBERT HOPKINS, III,

Plaintiff,

v.

DEPARTMENT OF DEFENSE,

Defendant.

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Civil Action No. 3:22-cv-00706 (E)

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DECLARATION OF MARK S. ZAID, ESQ.

I, MARK ZAID, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a person over eighteen (18) years of age and competent to testify. I make this Declaration on personal knowledge and in opposition to Defendant's Motion to Dismiss and for Summary Judgment.

2. I am admitted to practice law in the States of New York, Connecticut, Maryland, and the District of Columbia, as well as the D.C. Circuit, Federal Circuit, Second Circuit, and Fourth Circuit Courts of Appeals, and the United States District Courts for the District of Columbia, Maryland, Eastern District of New York, Northern District of New York, Southern District of New York, and the U.S. Court of Federal Claims.

3. My law practice, which has been based in Washington, DC, since July 1993, predominantly focuses on cases related to national security that involve members of the Intelligence, Military, and/or Law Enforcement Communities. For most of my professional career, I held a security clearance, including up to Top Secret/Sensitive Compartmented Information (otherwise commonly known as “TS/SCI”) and Q (a clearance level utilized by the Department of Energy that is the basic equivalent of TS/SCI) eligibility and have handled cases with authorized access to classified information since 1996, which is when I represented my first client in a pre-publication review challenge. I have been representing intelligence officers since 1993.

4. I can state unequivocally that I have litigated, and likely handled at the administrative level, more pre-publication review cases than any other attorney. Based on my more than twenty-five years of experience in this arena, I was accepted by a federal district court as an expert witness on the issue of prepublication classification review in Bissonnette v. Podlaski, 2018 U.S. Dist. LEXIS 94198, at *54-*63 (N.D. Ind. June 5, 2018). A list of my litigated prepublication review cases includes, but is not limited to:

- Samit v. Department of Justice, Civil Action. No. 22-3155 (D.D.C.)(challenged prepublication review redactions in book “*Because There Are Monsters*”);

- Lawless v. Dep't of Defense, 2024 U.S. Dist. LEXIS 170893 (D.D.C. Sept. 23, 2024)(D.D.C.)(challenged prepublication review redactions in book “*Hunting Nukes, a Fifty-Year Pursuit of Atom Bomb Builders and Mischief Makers*” (Mountain Lake Press, 2023);
- Kennedy v. Dep't of Defense, Civil Action No. 22-01091 (D.D.C.)(challenged prepublication review redactions in book “*The Activity: My Life Inside America's Most Secret Unit*” (St. Martin's Press, 2024));
- Beck v. Dep't of Defense, Civil Action No. 21-3249 (D. Md.)(challenged redactions in client memorandum drafted for third-party use);
- Esper v. Dep't of Defense, Civil Action No. 21-3119 (D.D.C.)(challenged prepublication review redactions in “*A Sacred Oath*” (William Morrow, 2022) for former Secretary of Defense Mark Esper);
- Sims v. Trump et. al., Civil Action No. 19-00345 (D.D.C.)(“*Team of Vipers: My 500 Extraordinary Days in the Trump White House*” (St. Martin's Press, 2019)(sought injunction to enjoin Govt from infringing First Amendment rights);
- Carlson v. CIA, Civil Action No. 18-1018 (D.D.C.)(challenged prepublication review redactions in “*In the Dark of War: A CIA Officer's Inside Account of the U.S. Evacuation from Libya*” (Fidelis Books, 2020));
- Bakos v. CIA, Civil Action No. 18-00743 (D.D.C.)(challenged prepublication review redactions in “*The Targeter: My Life in the CIA, Hunting Terrorists and Challenging the White House*” (Little, Brown and Company, 2019));
- Newbury v. DIA et al, Civil Action No. 16-2259 (D.D.C. 2016)(challenged redactions in resume);
- Shaffer v. DIA et al., 2015 U.S. Dist. LEXIS 52076 (D.D.C. 2015)(challenged prepublication review redactions in “*Operation Dark Heart: Spycraft and Special Ops on the Frontlines of Afghanistan – and The Path to Victory*” (Thomas Dunne Books, 2010));
 - Shaffer v. DIA et al., 901 F. Supp. 2d 113 (D.D.C. 2012)
 - Shaffer v. DIA et al., 601 F. Supp. 2d 16 (D.D.C. 2009);

- Boening v. CIA, 579 F. Supp. 2d 166 (D.D.C. 2008)(challenged prepublication review redactions in unpublished memorandum);
- Bernsten v. CIA, 618 F. Supp. 2d 27 (D.D.C. 2009)(challenged prepublication review redactions in “*Jawbreaker: The Attack on Bin Laden and Al Qaeda: A Personal Account by the CIA’s Key Field Commander*” (Crown, 2005));
 - Bernsten v. CIA, 511 F. Supp. 2d 108 (D.D.C. 2007);
- Wilson v. CIA, 586 F.3d 171 (2nd Cir. 2009)(“*Fair Game: My Life as a Spy, My Betrayal by the White House*” (Simon & Schuster, 2007)(not counsel of record, provided assistance));
 - Wilson v. CIA, 501 F. Supp. 2d 545 (S.D.N.Y.)(not counsel of record, provided assistance);
- Waters v. CIA, Civil Action No: 06-383 (D.D.C. 2006)(challenged prepublication review redactions in “*Class 11: Inside the CIA’s First Post-9/11 Spy Class*” (Dutton, 2006));
- Jane Doe v. CIA (D.D.C. 2003)(challenged prepublication review redactions in unpublished manuscript);
- Sterling v. CIA, Civil Action No. 03-00603 (D.D.C. 2003)(challenged prepublication review redactions in unpublished manuscript);
- Stillman v. CIA et al., 517 F. Supp. 2d 32 (D.D.C. 2007)(challenged prepublication review redactions in unpublished manuscript);
 - Stillman v. CIA et al., 319 F.3d 546 (D.C. Cir. 2002)
 - Stillman v. DoD et al., 209 F. Supp. 2d 185 (D.D.C. 2002); and,
- Eddington v. CIA (D.D.C. 1996)(challenged prepublication review redactions in “*Gassed in the Gulf: The Inside Story of the Pentagon-CIA Cover-Up of Gulf War Syndrome*” (Insignia Press, 1997)).

5. Many of the prepublication review cases that I handle for clients do not require litigation as we substantively secure favorable U.S. Government approval

during the administrative review process. This can be accomplished by persuading governmental reviewers that the information is appropriate for inclusion in the book or by substantive deletions or, more often, by a simple rewriting. I regularly provide behind-the-scenes advice and assistance to individuals within the Intelligence, Military and Law Enforcement Communities with respect to how to write and submit their manuscripts for prepublication review, as well as to shepherd the process through the appropriate federal agency. Oftentimes, only the individual and the specific agency conducting the review know of my involvement. That said, a list of books for which it is public knowledge that I handled the administrative prepublication review includes (and there are countless cases where my role is not public at this time), but is not limited to:

- “*Blowback: A Warning to Save Democracy from the Next Trump*” (Atria Books, 2023)(former Department of Homeland Security’s Chief of Staff Miles Taylor);
- “*Soldier Secretary: Warnings from the Battlefield & the Pentagon about America’s Most Dangerous Enemies*” (Hatchette, 2023)(former Secretary of Defense Christopher Miller’s memoir);
- “*ReadMe.Text*” (Farrar, Straus and Giroux, 2022)(Chelsea Manning’s memoir);
- “*Here, Right Matters: An American Story*” (Harper Collins, 2021)(Lt. Col. Alexander Vindman’s memoir);
- “*Hunter Killer: Inside America’s Unmanned Air War*” (Dutton, 2015);

- “*Right of Boom: The Aftermath of Nuclear Terrorism*” (Overlook Press, 2015);
- “*13 Hours: The Inside Account of What Really Happened In Benghazi*” (Twelve, 2014);
- “*Fool’s Mate: A True Story of Espionage at the National Security Agency*” (CreateSpace Independent Publishing, 2014);
- “*Run, Don’t Walk: The Curious and Courageous Life Inside Walter Reed Army Medical Center*” (Avery, 2014);
- “*Under Fire: The Untold Story of the Attack in Benghazi*” (St. Martin’s Press, 2013);
- “*CIA’s Greatest Covert Operation: Inside the Daring Mission to Recover a Nuclear-armed Soviet Sub*” (Univ. Press of Kansas, 2012);
- “*Inside Seal Team Six: My Life and Missions with America’s Elite Warriors*” (Little, Brown & Co., 2011);
- “*Uncompromised: The Rise, Fall, and Redemption of an Arab-American Patriot in the CIA*” (St. Martin’s Press, 2011);
- “*Time to Betray: The Astonishing Double Life of a CIA Agent Inside the Revolutionary Guards of Iran*” (Threshold, 2009);
- “*How to Break a Terrorist: The U.S. Interrogators Who Used Brains, Not Brutality, to Take Down the Deadliest Man In Iraq*” (Free Press, 2008);
- “*Spycraft: The Secret History of the CIA’s Spymasters, from Communism to al-Qaeda*” (Dutton, 2008); and,
- “*Inside the Wire: A Military Intelligence Soldier’s Eyewitness Account of Life at Guantánamo*” (Penguin Press, 2005).

6. I am recognized by the news media as an expert in this area and frequently asked to comment on prepublication review matters. I have been quoted in many

print articles as well as also appearing in radio and television interviews to discuss the legal aspects of the process. I have also written articles that relate to the prepublication review process, to include, but not limited to:

- “*The Constitution won’t let Trump silence White House aides*”, Washington Post, August 14, 2018, at <https://www.washingtonpost.com/news/posteverything/wp/2018/08/14/the-constitution-wont-let-trump-silence-white-house-aides/>;
- “*Muzzling the Messenger*”, Washington Times, Aug, 9, 2004, at <http://www.washingtontimes.com/news/2004/aug/9/20040809-090612-8558r/>.

7. I also helped lead a podcast with the International Spy Museum on the topic of prepublication review: “*So, I’m a Spy & I’d like to Write a Book...*”, November 2, 2021), that can be listened to at <https://thecyberwire.com/podcasts/spycast/510/notes>.

8. Additionally, I am a recognized expert on the Freedom of Information Act (“FOIA”), especially when it comes to litigation of national security Exemption One claims. I have been regularly litigating FOIA cases since 1993, as well as utilizing FOIA myself for over thirty-five years. I have delivered countless speeches on FOIA processing and litigation, including on panels at the American Society of Access Professionals. I was appointed by the Archivist of the United States to serve a two-year term (2014-2016) on the first Federal FOIA Advisory Committee. I have taught the D.C. Bar Association’s annual Continuing Legal Education course on FOIA since 2003, which is one of the Bar’s longest running

courses, as well as classes for several other bar associations, and I was a co-editor of LITIGATION UNDER THE FEDERAL OPEN GOVERNMENT LAWS from 2002 – 2012.

9. I also serve as the Executive Director of the James Madison Project and have served in that position since I founded the organization in 1998. JMP is a Washington, D.C.-based organization created for the primary purpose of educating the public on issues relating to intelligence gathering and operations, secrecy policies, national security and government wrongdoing. Much of the work undertaken by JMP involves litigation under disclosure statutes such as FOIA.

10. Furthermore, I have been a lecturer at Johns Hopkins University since 2014, in the Global Security Studies program, and at Texas A & M's Bush School of Government and Public Service since 2024, where I teach a Master's level course on "Legal Issues in National Security & Intelligence" or "National Security Law" (which includes a class on prepublication review).

11. Plaintiff's Complaint states: "It is not uncommon for authors to be represented by counsel during the prepublication review process, both in DOD and across the Executive Branch." This statement is accurate. I routinely correspond with the respective prepublication review offices in different agencies on my clients' behalf. I also know that my experience is not unique in this regard and

have discussed the matter with many of my colleagues in the past, including Plaintiff's counsel.

12. Plaintiff's Complaint further states: "The undersigned and other private attorneys who represent authors have submitted clients' manuscripts for prepublication review to various agencies and represented those clients in the prepublication review process without objections from the agencies." I understand that I am one of the "other private attorneys" referenced in this statement and can attest that this is an accurate statement. There are also times where I have, in particular where my client's affiliation with a particular agency is itself subject to classification or circumstances are not ideal, taken steps to receive a manuscript from my client that is double wrapped and sealed, which can be a proper and lawful manner in which to transmit information that may contain classified information, and then submit it myself to the specific federal agency for prepublication review.

13. According to Plaintiff's Complaint, the Defense Office of Prepublication and Security Review ("DOPSR") sent an e-mail to Plaintiff's counsel stating that DOPSR "does not work with an author's legal counsel or literary representative," adding, "Please have the author contact us directly with appropriate contact information, and we will provide him/her with an acknowledgement of the

manuscript. Failure to provide this information will result in the denial of Security Review of this manuscript and administrative closure of this case.”

14. I have coordinated the submission of many manuscripts to DOPSR on my clients’ behalf, and have participated in many discussions over the logistics of the pre-publication review. I have also often arranged for meetings, which I do not attend, between my client and DOPSR staff or other federal classification officials for discussions concerning the classified information in dispute.

15. While there are historical examples of when I was given authorized access by an agency to specific information that it claims is classified to facilitate the pre-publication review process, admittedly this is now not often the case. The federal government routinely takes the position especially with me, and particularly during litigation when this becomes a disputed issue, that lawyers – even ones holding an active security clearance – are not permitted access to their client’s manuscript because they have no “need-to-know”. I am aware, however, that numerous agencies, to include DOPSR, do not consistently apply that practice to other lawyers.

16. According to Plaintiff’s Complaint, Plaintiff’s counsel advised DOPSR that he would “be happy to facilitate . . . a discussion” about any concerns regarding classified information, but that “all correspondence regarding these submissions must be directed to” him. This would not be an uncommon


arrangement for pre-publication review. As I stated above, it is certainly not uncommon for me to handle the logistics. In fact, I generally require it.

17. According to Plaintiff's Complaint, the DOPSR Chief e-mailed Plaintiff's counsel and stated that DOPSR's "insistence on this process is standard DoD policy." It was further stated that "Failure of the author to correspond with the DoD evades the intent of the prepublication review process to not disclose non-public DoD information." I am not aware of this "standard DoD policy". That said, I will often include my client on the e-mail communications with DOPSR so that the Department can see that the relationship continues but I do handle the back and forth during the review process.

18. In fact, it has been my personal experience that pre-publication review offices often welcome the involvement of lawyers since it makes their jobs easier when they are working with someone who is already familiar with the system and who understands the role of negotiation in the process. Indeed, I have had many very positive experiences over the years with the leadership and staff of DOPSR, in particular.

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true to the best of my knowledge.

Date: April 14, 2025



Mark S. Zaid, Esq.